

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MICHAEL WOECK,

Plaintiff,

v.

ABB, INC., et al.,

Defendants.

No. 2:18-cv-1472

NOTICE OF REMOVAL FROM STATE
COURT UNDER 28 USC §§ 1331, 1442
(A)(1) AND 1446 (FEDERAL
QUESTION)

King County Cause No. 18-2-19966-2 SEA

JURY DEMANDED PURSUANT

TO FRCP 38

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN
DISTRICT OF WASHINGTON:

PLEASE TAKE NOTICE that Defendant CBS CORPORATION (hereinafter “Westinghouse”
or “Removing Defendant”) hereby removes this civil action to the United States District Court for the
Western District of Washington from the Superior Court of the State of Washington in and for the
County of King pursuant to 28 U.S.C. §§ 1331, 1442, and 1446, whereby this Court has subject
matter jurisdiction because of the claims with respect to persons acting under an officer or agency of
the United States. The grounds for removal are more particularly stated as follows:

1. The above-entitled action was commenced in the Superior Court of King County, State
of Washington, on August 8, 2018. *See* Attachment A, filed concurrently herewith. Plaintiff Michael

1 R. Woeck filed this lawsuit against Westinghouse and 22 other Defendants, based on the allegations
 2 that Mr. Woeck was exposed to asbestos from Defendants' products. Plaintiff alleges that Mr. Woeck
 3 worked as a shipfitter, welder, and electrical contractor at Marine Power & Equipment starting in
 4 1968. The Complaint further alleges Mr. Woeck work on or with crews tasked with scrapping or re-
 5 powering United States Army or United States Navy-owned vessels, including but not limited to
 6 World War II era vessels and vessels with hull classification codes: LSD, ARL, and ATA. According
 7 to the Complaint, Mr. Woeck continued to work on U.S. Navy-owned vessels and other commercial
 8 vessels through the 1980s. While the Complaint made affirmative reference to work aboard
 9 commercial vessels, it did not make a specific allegation as to exposure to asbestos from a turbine
 10 made by Westinghouse aboard a U.S. Navy-owned vessel. Westinghouse was served with the
 11 Summons and Complaint on August 14, 2018.

12 2. On September 7, 2018, Removing Defendant received Plaintiff's First Set of
 13 Interrogatories and Requests for Production of Documents to Defendant CBS Corporation. Attached
 14 thereto, was Exhibit 1, which purported to be a list of vessels and/or locations where Plaintiff Woeck
 15 worked during his career. This list set forth the names of specific United States Navy vessels at issue
 16 in this case. *See* Exhibit 1 to Declaration of Alice C. Serko in Support of CBS Corporation's Notice
 17 of Removal from State Court ("Serko Decl.").

18 3. This Notice of Removal is being filed within thirty (30) days after Removing
 19 Defendant received "Exhibit 1" attached to Plaintiff's First Set of Interrogatories and Requests for
 20 Production of Documents to Defendant CBS Corporation, served on September 7, 2018, which sets
 21 forth the basis for Removing Defendant's removal under 28 U.S.C. §1446(b). *See* Serko Decl.

22 4. Upon information and belief, Westinghouse manufactured various equipment for use
 23 on U.S. Navy vessels, including the USS Poseidon (ARL-12) and the USS Oak Hill (LSD-7),
 24 pursuant to contracts and specifications executed and controlled by the U.S. Navy, including turbines
 25 and turbine related equipment. The basis for removal is that, in the manufacture and sale of turbines,
 26 generators, boilers, and/or other equipment for the U.S. Navy, Removing Defendant was acting under

1 an officer or agency of the United States within the meaning of 28 U.S.C. § 1442(a)(1).

2 5. Removing Defendant is not required to notify and obtain the consent of any other
3 Defendant in this action for removal under § 1442(a)(1). *See e.g., Ely Valley Mines, Inc. v. Hartford*
4 *Accident Indemnity Co.*, 644 F.2d 1310, 1315 (9th Cir. 1981); *National Audubon Society v.*
5 *Department of Water & Power of the City of Los Angeles*, 496 F. Supp. 499, 509 (C.D. Cal. 1980).

6 6. Should Plaintiff file a motion to remand this case, Removing Defendant respectfully
7 requests an opportunity to respond more fully in writing in accordance with LCR 7(d)(3), but offers
8 the following authorities at this time:

9 a. As recognized in *Boyle v. United Technologies Corp.*, 487 U.S. 500, 504 (1988),
10 Removing Defendant has a federal defense to this action, *i.e.*, government contractor
11 immunity from liability for injuries arising from any exposure to asbestos related to
12 equipment on board U.S. Navy vessels, insofar as they were constructed or repaired
13 by Removing Defendant. Removal pursuant to 28 U.S.C. § 1442(a)(1) is appropriate
14 where the moving party can (1) demonstrate that it acted under the direction of a
15 federal officer, (2) raise a colorable federal defense to Plaintiff's claims, and (3)
16 demonstrate a causal nexus between Plaintiff's claims and acts it performed under
17 color of federal office. *Mesa v. California*, 489 U.S. 121,124-25,129-31,134-35
18 (1989).

19 b. This case is removable under the authority cited above. In constructing its marine
20 steam turbines and/or turbine related equipment for the U.S. Navy, Removing
21 Defendant acted under the direction of a federal officer. Consequently, removal is
22 appropriate.

23 c. A properly removed case cannot be remanded for discretionary or policy reasons such
24 as allegedly related State court cases or a contention that judicial economy compels
25 remand. 28 U.S.C. § 1447(c); *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S.
26 336 (1976). The federal officer removal statute is not narrow or limited, and it should

1 not be frustrated by a narrow or grudging interpretation of § 1442(a)(1). *Willingham v.*
2 *Morgan*, 395 U.S. 402, 405 (1960).

3 7. A copy of the operative Complaint and Jury Demand are being filed herewith pursuant
4 to LCR 101(b) as Attachment A and B, respectively.

5 8. As required by 28 U.S.C. § 1446(b) and the local rules of this Court, true and correct
6 copies of the State Court process and pleadings served upon Removing Defendant will be filed within
7 fourteen (14) days of the filing of this Notice of Removal.

8 9. Immediately upon filing of this Notice of Removal, Removing Defendant will file a
9 copy of the Notice of Removal with the Clerk of the King County Superior Court, and will provide
10 written notice to counsel for Plaintiff and Defendants in accordance with 28 U.S.C. § 1446(d).

11 10. By seeking removal, Removing Defendant does not waive any defenses, including, but
12 not limited to, lack of personal jurisdiction, insufficiency of process, or service of process.

13 INTRADISTRICT ASSIGNMENT [LCR 3(e)]

14 Plaintiff filed the Complaint in King County Superior Court.

15 WHEREFORE, Removing Defendant respectfully requests that this action now pending in the
16 King County Superior Court be removed to this Court and that further proceedings be conducted in
17 this Court as provided by law.

1 DATED this 5th day of October, 2018.

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2
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CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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